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Health and food audits and analysis

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FINAL REPORT OF AN AUDIT
CARRIED OUT IN
BELGIUM
FROM 19 SEPTEMBER 2017 TO 29 SEPTEMBER 2017
IN ORDER TO
EVALUATE THE CONTROL SYSTEMS FOR ORGANIC PRODUCTION AND LABELLING OF ORGANIC PRODUCTS

In response to information provided by the competent authority, any factual error noted in the draft report has been corrected; any clarification appears in the form of a footnote.

Executive Summary

This report describes the outcome of a DG Health and Food Safety audit in Belgium, carried out between 19 September 2017 to 29 September 2017, under the provisions of Regulation (EC) No 882/2004 on official food and feed controls.

The objective of the audit was to evaluate the controls on organic production and labelling of organic products.

The control system for organic production in Belgium is only partially in place. There is no competent authority responsible for import controls of organic goods, and market controls only cover follow up of complaints and control bodies are not annually supervised by all regional competent authorities. Although inspections by control bodies at operators are overall effective and the number of additional and unannounced inspections and sampling by control bodies goes far beyond EU requirements, enforcement is weak, in particular, in cases of severe and recurrent irregularities. This, together with the fact that the likelihood of irregularities are neither reported to competent authorities nor fully investigated by them reduces the effectiveness of the control system.

The report contains recommendations to the competent authorities, aimed at rectifying the shortcomings identified and enhancing the implementation of control measures.

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ABBREVIATIONS AND DEFINITIONS USED IN THIS REPORT

Abbreviation	**Explanation**
BELAC	Belgium Accreditation Organisation
CA(s)	Competent authority(ies)
CB(s)	Control Body(ies)
DG	Directorate-General
EC	European Community
EU	European Union
FiBL	*Forschungsinstitut für biologischen Landbau* / Research Institute of Organic Agriculture
FPS	Federal Public Service
MANCP	Multi Annual National Control Plan
MS(s)	Member State(s)
TRACES NT	Trade Control and Expert System New Technology

1 INTRODUCTION

This audit took place in Belgium from 19 to 29 September 2017. It formed part of Directorate-General (DG) for Health and Food Safety's published programme.

The team comprised two auditors from DG Health and Food Safety, one representative from DG Agriculture and Rural Development and a national expert from one Member State (MS).

Representatives from the three competent authorities (CAs) accompanied the DG Health and Food Safety team for the duration of the audit. An opening meeting was held on 19 September with the CAs and representatives from the regional paying agencies, the Belgian Accreditation Organisation (BELAC), the Federal Public Service (FPS) for Economy and the Food Safety Agency. At this meeting, the objectives of, and itinerary for, the audit were confirmed by the DG Health and Food Safety team and the control systems were described by the authorities.

The report contains recommendations to the CAs, aimed at rectifying the shortcomings identified and enhancing the implementation of control measures.

2 OBJECTIVES

The objective of the audit was to evaluate the control systems in place for organic production and labelling of organic products and in particular the implementation of the requirements set out under Regulation (EC) No 834/2007 concerning:

- All stages of production, preparation and distribution of organic products, including controls at import and
- The use of indications referring to organic production in labelling and advertising.

In pursuit of these objectives, the following sites were visited:

Visits/meetings		Comments
Competent authorities		
Regional CAs	3	Opening, pre-closing and closing meetings in Brussels
Control Bodies		
Control Bodies	2	Office audits
On-Site-Visits		
2 Regions	6	Witness audits at four producers (eggs, milk, vegetables) and two processors (bakery, ready-made food)

In terms of scope, the audit assessed the performance of the CAs, as well as the organisation

of the controls carried out by Control Bodies (CBs) including import controls, controls of operators producing, preparing and distributing organic products, controls on the labelling and marketing of organic products. The audit also addressed verification procedures and audits.

3 LEGAL BASIS

The audit was carried out under the general provisions of European Union (EU) legislation, in particular Article 45 of Regulation (EC) No 882/2004 of the European Parliament and of the Council.

EU legal acts quoted in this report refer, where applicable, to the last amended version. Full reference to legislation quoted in this report is given in Annex 1.

4 BACKGROUND

No audit on organic production had previously been carried out in Belgium.

5 FINDINGS AND CONCLUSIONS

5.1 RELEVANT NATIONAL LEGISLATION AND PROVISIONS

Legal Requirements

Article 291 of the Treaty on the functioning of the EU establishes that MSs shall adopt all measures of national law necessary to implement legally binding Union acts.

Findings

1. Organic production is a competence of the Regions.

2. In addition to relevant EU and national rules, the main regional legislation on organic production and labelling of organic products of the Flemish, Walloon and Brussels-Capital Regions, respectively, are:
   - Decree of the Flemish Government of 12 December 2008 and related implementing Ministerial Decree of 22 June 2009;[1]
   - Decree of the Walloon Government of 11 February 2010 (repealing an earlier Decree);

[1] "In their response to the draft report the Competent Authority noted that, in addition to the Decree of the Flemish Government of 12 December 2008 and the Ministerial Decree of 22 June 2009, the following Ministerial Decrees also apply in the Flemish Region:
- Ministerial Decree of 27 May 2011 laying down rules for organic production;
- Ministerial Decree of 17 June 2015 laying down exceptional production rules for the use of non-organic vegetative propagation material;
- Ministerial Decree of 20 April 2015 laying down exceptional production rules for the use of non-organic seed or non-organic seed potatoes. This was recently replaced by the Ministerial Decree of 16 October 2017 laying down exceptional production rules for the use of non-organic seed or non-organic seed potatoes.

The full list of legislation on organic production applicable in the Flemish Region can be found at: https://lv.vlaanderen.be/nl/bio/wetgeving-biologische-landbouw"

- Decree of the Government of the Brussels-Capital Region of 3 December 2009.

3. The regional regulations lay down rules on the responsibilities of the regional CAs with regard to the approval and supervision of the CBs as well as the withdrawal of the approval of a CB for official controls. These regional rules also describe the responsibilities of the CBs, including in relation to initial inspections, design and execution of risk-based controls, sampling and analysis, sanctioning of irregularities and reporting of control results.

4. Formal coordination takes place in a working group which is responsible for the implementation of EU legislation at the level of the regions. This working group is however not specific to organic production.

5. Some requirements in the regional legislations and / or their implementation are not in line with EU rules. This mainly relates to exceptional production rules (see chapter 5.2.7), conditions for the grazing of cattle (paragraph 40) as well as the exemption and control of retailers (see paragraph 27 and 30).

Conclusions on National Legislation and Provisions

6. Regional provisions are in place to implement legally binding Union acts. However, some of these provisions and / or their implementation are not in line with requirements of the EU organic regulations.

5.2 ORGANISATION AND IMPLEMENTATION OF CONTROLS

5.2.1 Competent authorities and Control Bodies

Legal Requirements

Articles 4 and 6 of Regulation (EC) No 882/2004 of the European Parliament and of the Council

Article 27(1), (4) and (14) of Council Regulation (EC) No 834/2007

Article 92 of Commission Regulation (EC) No 889/2008

Findings

7. The country profile for Belgium published on the DG Health and Food Safety website provides a description of the control system for organic production: http://ec.europa.eu/food/audits-analysis/country_profiles/details.cfm?co_id=BE

8. There are three CAs designated for ensuring compliance with the requirements of the EU organic regulations:
   - The Flemish Department of Agriculture and Fisheries
   - The Walloon Directorate-General for Agriculture, Natural Resources and Environment and

- The Brussels Economy and Employment, Directorate Economy, Agriculture within the Public Service of the Brussels-Capital Region.

9. In Belgium, official controls on organic production are delegated to three CBs.

10. The regional CAs are responsible for the approval, supervision and withdrawal of the delegation of official controls to CBs. A CB which intends to operate in all regions of Belgium requires approval by each of the three regional CAs.

11. Market control on general labeling requirements is the responsibility of the Federal Public Service (FPS) for Economy. Complaints related to organic products are followed up by the relevant regional CAs. Files reviewed during the audit demonstrated that this has been done in a satisfactory manner.

12. Customs is responsible for general import controls. There is however no CA responsible for import controls of organic goods and the implementation of relevant EU requirements. This is not in line with Article 27(1) of Regulation (EC) No 834/2007 which requires EU MSs to designate one or more competent authorities responsible for controls in respect of the obligations established in the EU organic regulations (see also chapter 5.2.8)

13. The regional CAs stated that a protocol is being developed between the Regions and Customs for the implementation of the electronic certification via the Trade Control and Expert System New Technology (TRACES NT) applicable as of October 2017. However, neither a draft nor a deadline for finalization of such a document could be provided by the regional CAs or Customs to the audit team. This, together with the fact that no CA is currently responsible for import controls, puts at risk the timely implementation of the electronic certification system.

14. There are two paying agencies, one for Flanders and Brussels-Capital and one for Wallonia, responsible for the control and payment of subsidies to organic farmers under the EU Common Agricultural Policy scheme.

15. Files reviewed confirmed that good communication is in place between the regional CAs and the paying agencies concerning irregularities relating to EU organic rules and the exchange of other relevant information such as the list of land parcels managed by an organic farmer. However, irregularities related to imported goods are not shared in a systematic manner by the regional CAs with Customs (see paragraph 62).

Conclusions Competent Authorities and Control Bodies

16. The control system for organic production is only partially in place. Although competencies and related obligations are well defined at regional level, no CA is responsible for import controls of organic goods (see also chapter 5.2.8).

5.2.1.1 Control Bodies: Approval, Supervision and Withdrawal

Legal Requirements

Articles 5(2) and (3) of Regulation (EC) No 882/2004

Articles 27(5) to (9) and 27(14) of Regulation (EC) No 834/2007

Articles 92c and 92e of Commission Regulation (EC) No 889/2008

Findings

17. CBs must be approved by the CA of the Region they intend to operate in.

18. Supervision procedures are in place in Wallonia and Flanders. In Flanders, new procedures have been drafted and are already followed by the CA when supervising CBs, but they have not yet been adopted. The CA stated that a deadline for adoption of these procedures has not yet been set.

19. In Flanders, documentary checks at the CBs headquarters and witness audits at operators are carried out in the framework of annual supervision by CAs. In Wallonia, supervision is carried out based on documentary checks at CBs headquarters, which includes the checking of operator files and inspection reports. However, no evidence was presented to the audit team to demonstrate that the CA evaluation also covers the performance of CB inspectors at operators. Reports by BELAC on CBs' performance are accessible to the CAs at the CBs head offices.

20. In Brussels-Capital, no supervision of CBs has been carried out since 2012. During the office audit at CB1, it was confirmed that the CA of Wallonia had not conducted any office audits or witness audit in 2016. This is not in line with Article 92e of Regulation (EC) No 889/2008 according to which CAs have to organise an annual inspection of CBs that have been delegated control tasks under the EU organic regulations.

21. In 2015, one CB had decided to stop its control and certification activities because of unsatisfactory performance identified during supervision by the regional CA (Flanders). Before the approval of the CB by the CA was withdrawn, a two month transitional period was agreed between the CA and the CB to allow full transfer of the CB's operators to other CBs. The evidence provided by the CA demonstrated that the transfer of operators was satisfactory.

22. Advisory groups are regionally established with CBs, farmers, associations, and the CA participating. There are advisory committees in place in Flanders and Wallonia which meet several times per year (four times in Wallonia; every two months in Flanders). These committees discuss interpretative notes on organic rules which, once approved by CAs, are binding for CBs. The audit team was provided with relevant evidence. The CAs of the three Regions stated that such notes are implemented in any of the Regions, as appropriate.

23. Files reviewed during the audit confirmed that, in line with regional requirements, CBs communicated to the regional CAs the lists of all operators on a monthly basis as well as

enforcement measures imposed by CBs twice per year. However, shortcomings have been identified with regard to the communication of irregularities and the likelihood of irregularities by CBs to the CAs (see chapter 5.2.9).

Conclusions on Control Bodies: Approval, Supervision and Withdrawal

24. Supervision of CBs by regional CAs is only partially implemented. Good coordination and communication is in place with regard to certain aspects, although there are shortcomings regarding the communication of irregularities by CBs to the CAs (see also chapter 5.2.9).

5.2.2 Registration of operators

Legal Requirements

Article 28(1), (2) and (5) of Council Regulation (EC) No 834/2007

Article 92b of Commission Regulation (EC) No 889/2008

Findings

25. Registration of operators is delegated to CBs. CBs are required to send updated lists of operators to CAs by the end of each month.

26. Lists of operators are published on the webpages of the CAs of the three Regions. On these webpages links are provided to relevant CB webpages where updated documentary evidences of operators can be accessed. Evidence of monthly communication of updated lists of operators by CBs to regional CAs was furnished to the audit team. However, the documentary evidence issued by one of the three CBs to operators does not follow the model provided for in annex XII of Regulation (EC) No 889/2008. This is not in line with Article 92b of the same Regulation.

27. All three Regions made use of Article 28(2) of Regulation (EC) No 834/2007 and exempted retailers selling pre-packed products to the final consumer. According to Article 4.2 and 4.3 of the Decree of Wallonia and Article 4.2 and 4.3 of the Decree of Bruxelles-Capital the exemption from official controls is limited to retailers with an annual turnover of less than 5,000 Euros (of sales of organic products) in these two Regions provided conditions laid down in Article 28(2) of the above mentioned regulation are fulfilled.However, CAs confirmed that no controls are undertaken to verify whether exempted retailers fulfil conditions for exemption from official controls provided for in Article 28(2) of Regulation (EC) No 834/2007.

Conclusions on Registration of Operators

28. The system in place generally ensures that operators are registered and that key information about their organic activity is made publicly accessible by CAs. However, there is no system in place to verify whether exempted retailers fulfil conditions for

exemption. Moreover, documentary evidences issued by CB do not necessarily follow the model provided for in the EU regulation.

5.2.3 Planning and Prioritisation of Controls

Legal Requirements

Articles 3 and 41 of Regulation (EC) No 882/2004

Article 27(3) and 28(2) of Regulation (EC) No 834/2007

Articles 65(4) and 92c(2) of Commission Regulation (EC) No 889/2008

Findings

29. The Multi-Annual Control Plan (MANCP) contains a section describing the control system for organic production in Belgium. However, it does not include information on some of the key aspects of the control system and its supervision, including procedures and resources, contrary to requirements laid down in Article 92f and Annex XIIIb of Regulation (EC) No 889/2008.

30. All operators certified by the CBs visited receive at least one annual control. However, Article 17 of the Decree of the Flemish Government referred to in paragraph 2 provides for partial annual checks on retailers provided that controls cover all aspects during a period of three years. This is not in line with Article 27(3) of Regulation (EC) No 834/2007 which requires that operators, with the exception of wholesalers and operators selling to the final consumer or user as described in Article 28(2) of the same regulation, must be subject to a verification of compliance once a year.

31. CBs visited conduct a high number of risk-based additional and unannounced inspections in order to comply with regional rules. These controls must account for at least 50% in Flanders and at least 60% in Wallonia and Brussels-Capital, respectively of all operators.

32. Both CBs plan and prioritise the controls based on risk assessment of their operators for which, overall, relevant risk criteria are taken into account. However, CB1 does not consider quantities of products as a risk criterion, which is one of the minimum risk criteria defined in Article 65(4) of Regulation (EC) No 889/2008. The CB stated that this aspect is indirectly considered as the duration of controls, as well as the annual turnover derived from organic production (> 700,000 Euro), are factors taken into account in its risk assessment.

33. CBs assign operators to each of their inspectors and it is up to the inspectors to schedule these inspections at the appropriate time. Implementation of controls assigned to inspectors is closely monitored by both CBs visited and inspectors are reminded in case of delays. This allows the CB to adjust resources as necessary.

34. Both CBs, in principle, require processors to notify the time schedule of processing of organic products in order to plan their inspections accordingly. CB1 requires the processors to notify (via the CB webpage) the processing of organic products seven days in advance. Files reviewed by the audit team showed that this was respected for only 30% of the inspections at processors. Nevertheless, the CB has taken measures to improve the situation. The software tool was updated and now allows the CB to better monitor and intervene when inspections were not conducted at the time of processing of organic products. A slight improvement of the numbers of inspections at the time of processing could be noticed for 2017.

Conclusions on Planning and Prioritisation of Controls

35. CBs' control plans are based on an assessment of the risk which is generally adequate and efforts are made to increase the effectiveness of controls by improving the planning of visits to processors. CBs conduct a high number of controls which potentially compensate the risk related to the fact that not all CBs directly consider production quantities in their risk evaluation of operators. Some key information is not yet reported in the framework of the MANCP.

5.2.4 Controls of operators

Legal Requirements

Articles 8 and 9 of Regulation (EC) No 882/2004

Titles II and III of Regulation (EC) No 834/2007

Title II and IV of Regulation (EC) No 889/2008

Article 65 of Commission Regulation (EC) No 889/2008

Findings

36. Inspections observed were generally well prepared and structured and inspectors were knowledgeable. All inspectors observed were equipped with laptops where relevant information such as previous inspection reports / irregularities is accessible. Inspectors explained the objective and scope of the visit to the operators at the beginning of the inspections. All the inspectors used detailed checklists which guided them through the inspection and which were completed during or at the end of the inspection. Inspectors explained to operators the shortcomings identified and the completed checklist was electronically signed by both, the inspector and the operator, and, either immediately or at the latest the day after, provided to the operator.

37. Inspections observed were overall effective, although some weaknesses were noted by the audit team with regard to labelling of organic products (see paragraph 45), the calculation of the balance of the input / output and the verification of the organic status of products (ingredients) received by processors.

38. A calculation of the balance of input and output was conducted during all inspections observed. The exercise was mainly based on documentary checks and often did not include the verification of the real situation on the spot. At the egg producers visited, the input/output calculation focused on feed consumption per hen per day for a randomly selected hen house. The data related to an appropriate period, starting from the stocking day of the house with hens up to the inspection day. Inspectors took data from records such as the volume of feed in stock, but did not verify the real amount of the feed still in stock on the day of inspection. At a plant producer, the inspector verified invoices for sale but did not check plausibility of these quantities by comparing them with actual production data and estimated yields. At one of the processors visited, the inspector did not verify the accuracy of the records kept by the operator regarding quantities produced and sold, despite the fact that relevant invoices were available. This is not in line with Article 66 of Regulation (EC) No 889/2008 which requires that documentary accounts are used to verification operations performed by the operator.

39. At one of the processors visited, the internal checklist for reception of goods referred to food safety aspects only but not to verification of the organic status of a product. This had never been raised as non-compliant by the CBs in the past. The CBs visited confirmed that operators are not required to record the verification of the organic status of the goods at reception which is not in line with Article 66(2) of Regulation (EC) No 889/2008.

40. At a dairy farm, the audit team noted that the CB accepts that operators may keep animals permanently indoors up to an age of six months, even during the grazing period. The responsible CA confirmed that the CB follows relevant instructions adopted by the advisory committee referred to in paragraph 22. This is not in line with Article 14(2)(b)(ii) of Regulation (EC) No 834/2007 and Article 14(2) of Regulation (EC) No 889/2008 which stipulates that herbivores shall have access to pastures for grazing whenever conditions allow.

Conclusions on Controls at Operators

41. Controls at operators were overall effective although some shortcomings were observed with regard to the control of labelling of organic products, the calculation of input/output and the records of the verification of the organic status of products when received by operators. The implementation of some production rules is not in line with EU organic regulation.

5.2.5 Controls on Labelling and Traceability

Legal Requirements

Article 23 and 24 of Regulation (EC) No 834/2007

Title III of Commission Regulation (EC) No 889/2008

Findings

42. The audit team selected two products for traceability checks at a retailer. The CA responsible demonstrated that all ingredients selected could be traced back to production or to the EU border in case of imported goods. The files also demonstrated that operators involved had functioning internal traceability systems in place.

43. As regards the labelling, a number of labels on packaging of organic products were seen which included a reference to both, EU and non-EU agriculture, on the same label despite the fact that ingredients were of either EU or non-EU origin. The CAs stated that such reference, i.e. EU / non-EU on the same package, is considered acceptable mainly for practical reason, even if this reference does not always fully reflect the content of the product. This is not in line Article 24(1)(c) of Regulation (EC) No 834/2007. At another operator certified by CB1, the size of the EU logo on the label used did not meet the minimum dimensions set out in point 7 of Annex XI of Regulation (EC) No 889/2008. The labels were provided by the operator's producer association who market the operator's production to final consumers. The producer association is also certified by CB1. This issue has never been raised as non-compliant by the CB either during the inspection observed by the audit team or during previous inspections. At another operator (CB2), the packaging material used for the processed product did not show the CB code number as required by Article 24(1)(a) of Regulation (EC) No 834/2007. The CB has never requested the correction of this non-compliance although the operator has been using this type of packing material for several years.

Conclusions on Labelling and Traceability

44. The system in place generally allows for traceability of organic products at all stages. However, controls of labels were superficial and the lack of obligatory information was overlooked with the risk that consumers are misled or that key information to ensure traceability of a product is not provided.

5.2.6 Sampling and laboratory analysis

Legal Requirements

Article 12 of Regulation (EC) No 882/2004

Article 65 (2) of Commission Regulation (EC) No 889/2008

Findings

45. The CBs visited take and analyse a high number of samples which goes far beyond the minimum requirement set out in the EU regulation. The risk assessment performed by the CBs to select operators for sampling takes into account a number of relevant criteria including those defined in the EU regulation.

46. Both CBs have adequate procedures for the sampling and testing of organic products. Sampling procedures also include guidelines for sampling in cases of suspicion.

47. The two CBs visited have a list of laboratories which are used for the testing of organic samples. These laboratories are accredited to ISO 17025, but they are not designated by the CAs for the testing of organic products as required by Article 12(1) of Regulation (EC) No 882/2004.

48. The CAs of Flanders and Wallonia stated that the scope of active substances tested by the laboratories in the case of organic samples is verified during supervision of CBs. However, the audit team noted that result of such verification was not reported by the CAs in the relevant supervisory reports.

49. The CBs visited, stated that, in relation to the scope of active substances analysed for, they relied on the fact that the laboratory was accredited. In their view, accreditation implied that the laboratory would be aware of the appropriate testing scope for organic samples. Nevertheless evidence was seen that CBs request single residue methods when required, for example when substances such as glyphosate have to be tested for.

50. The laboratory reports reviewed by the audit team at both CBs visited showed reporting limits for all substances tested for. Both CBs visited confirmed that cases of non-authorised substances are investigated where laboratory results are quantifiable. CB2 stated that a factor of 1.5 is applied to take account of the uncertainty of the laboratory results. (see paragraph 68).

Conclusions on Sampling and Laboratory Analysis

51. The high number of samples annually taken by the CBs is based on an adequate risk assessment and laboratories used by CBs are accredited. However, laboratories are not designated by the CA as required by EU legislation.

5.2.7 Exceptional production rules and other derogations.

Legal Requirements

Article 29 and sections 2 to 4 of Chapter 6 of Title II of Commission Regulation (EC) No 889/2008

Findings

52. Conditions for the granting of exceptional production rules and other derogations laid down in the regional legislations, and their implementation, are not always in line with the EU organic regulation.

53. As regards dehorning of animals, derogations granted by CAs to individual operators are valid for one year and for an estimated number of animals. In the case of CB1 applications by farmers are accepted before animals are born. This is not in line with

Article 18 of Regulation (EC) No 889/2008 which does not provide for routine dehorning, but requires a case-by-case assessment before derogation can be granted. The CB assesses the case and forwards a proposal for decision to the CA. However, no documents are provided to the CA to support the CB proposal.

54. CB1 stated that dehorning has to be done within seven days of birth of the animal. In the case of CB2, the audit team noted that derogations were granted for the dehorning of animals of up to 6 months of age and more. During inspections observed, it was not verified whether animals when dehorned were of appropriate age and subject to application of appropriate anaesthesia/analgesia as required by Article 18(2) of Regulation (EC) No 889/2008.

55. During witness audits, it was noted that a conversion period of three months was granted to an operator who produces vegetables in glasshouses. The CB stated that it followed relevant instructions provided by the CA (Flanders) on its website. This was confirmed by the relevant CA. The CA further stated that pesticides which were not authorised for organic production were previously used on production in hydroculture and that the soil, at that time, was covered with plastic film which prevented contamination. This was confirmed by a soil sample (no residues) before the three months conversion period was granted to the operator. This is not in line with Article 36(2)(b) of Regulation (EC) No 889/2008 which stipulates that the parcels for which the conversion period is reduced were natural or agricultural areas which were not treated with non-authorised products over a period of three years before such derogation can be granted.

56. Regional legislations (see paragraph 2) allow for the tethering of animals in holdings having less than 50 animals. However, no evidence was provided to the audit team demonstrating that all other specific conditions laid down in Article 39 of Regulation (EC) No 889/2008 are verified by CAs before the derogation is granted.

Conclusions on Exceptional Production Rules and Other Derogations

57. Some of the regional provisions for exceptional production rules and other derogations, as well as their implementation, are not in line with EU rules.

5.2.8 Imports of Products from Organic Production

Legal Requirements

Articles 32 and 33 of Regulation (EC) No 834/2007

Chapter 3 of Title III and Annexes II, III, V and VI of Commission Regulation (EC) No 1235/2008

Findings

58. There is no CA designed for import controls of organic products in Belgium, contrary to Article 27(1) of Regulation (EC) No 834/2007.

59. Provisions of Regulation (EC) No 1235/2008 in relation to the EU import of organic products such as the risk assessment to determine the frequency of physical checks or the sampling of consignments of organic products before they are released for free circulation into the EU by Customs are not implemented.

60. Customs may receive, on an ad-hoc basis, information from regional CAs as regards organic consignments entering into the EU via Belgium. The audit team was presented some examples showing that organic consignments from Ukraine, Russia and Kazakhstan were sampled. However, the CAs could neither present an overview nor could they provide evidence to confirm that all organic consignments from Ukraine, Russia and Kazakhstan had been subject to the reinforced control measures adopted by the EU.

61. The CBs visited require importers to notify in advance the arrival of organic consignments. This information is not shared with CAs or CBs of the first consignee. Moreover, CBs do not take this information into account for their planning of controls at importers which would provide for an opportunity to sample consignments before they are released for free circulation.

62. In a case reviewed by the audit team, an organic consignment was imported into Belgium without a Certificate of Inspection. This was discovered by the CB during control at the importer who had imported this consignment. The CB notified the regional CA, but the irregularity was not shared with Customs.

Conclusions on Imports of Products from Organic Productions

63. Import controls may take place on an ad-hoc basis in Belgium. However there is no CA responsible for import controls and it is currently not ensured that relevant control requirements are implemented.

5.2.9 Measures in cases of irregularities and infringements

Legal Requirements

Articles 54, 55(1) of Regulation (EC) No 882/2004

Article 27(5)(d) and 30 of Regulation (EC) No 834/2007

Articles 91, 92, 92(a) and (d) of Commission Regulation (EC) No 889/2008

Findings

64. Catalogues of measures to be taken in case of irregularities are published as part of the regional legislations referred to in paragraph 2. In fact, the catalogues used by Wallonia and Brussels are very similar.

65. The catalogues of measures are overall comprehensive and the files reviewed by the audit team confirmed that the CBs apply measures in line with the catalogues. However,

the majority of measures provided for in these catalogues consist only of light action such as "observation", "comment", "warning", "a request for improvement" and enhanced controls". Moreover, operators who use conventional seeds without prior approval receive a "warning" in Flanders and a “request for improvement” in Wallonia.

66. Files reviewed and inspections observed during the audit confirmed that measures imposed by CBs in particular in cases of severe and/or recurrent non-compliances were not sufficiently effective to ensure compliance with Article 30 of Regulation (EC) No 834/2007:
    - An organic operator was only issued a “request for improvement” for the recurrent use of conventional seed without prior-derogation from the CB. The field in question was only declassified after the operator was found to have used conventional seeds without prior-approval for the fifth time.
    - The inspection history of an operator visited showed recurrent non-compliances such as insufficient separation, incorrect calculation of the balance of input/output for several organic products, lack of notification of new products to the CB and the selling of several products labelled organic without certification. Despite these severe non-compliances with organic rules, the CB continued to certify the operator. Similar non-compliances were detected during the witness audit and the CB decided to suspend the certificate following this visit.
    - In several cases, it was noted by the audit team that the CBs continued certifying operators before non-compliances with production rules, such as excessive stocking density, inadequate area for animals were corrected by the operators and verified by the CB.
    - Moreover, the CBs visited confirmed that an irregularity noted at an operator is disregarded after a period of 24 months elapses and that, if then the same irregularity occurs, the softest measures suggested in the sanction catalogues would be applied.

67. Regional legislations require the investigation of irregularities irrespective of the level of residues of non-authorised products / pesticides found in an organic product.

68. However, files reviewed by the audit team confirmed that not all such cases were investigated in line with Article 91 of Regulation (EC) No 889/2008.

69. CB2 confirmed that in cases where samples taken from raw material not yet used by a processor show residues below the limit referred to above, the processor can use the material in question, as the processor in question is not guilty of the contamination, which must have occurred earlier in the food chain. The CB stated that it would not await the outcome of the investigation contrary to Article 91 of the above mentioned regulation. Moreover, the CB confirmed that the producer of the raw material would not necessarily be informed of the incidence, which is not in line with Article 92(4) of Regulation (EC) No 889/2008 requiring the CB to inform without delay the CB of the operator who had produced the product in question.

70. In another case, CB2 had taken two samples from a batch in order to investigate a

suspicion notified by the importer of the product (Cumin) in question. The CB sent one of the two samples taken to the laboratory. The sample tested positive for cypermethrin (0.015 mg/kg). The operator required the counter sample to be tested which did not show any residue of the insecticide. The CB accepted the result from the counter sample and the product was sold as organic. However, the audit team noted that 1) the counter sample was tested in a laboratory which was chosen by the operator but was not listed in the CB procedures and 2) that the sample taken by the operator prior to the sampling by the CB also contained residues of cypermethrin. The CB was aware of this and confirmed that, in cases where a counter sample has to be tested, the operator has the possibility to choose the laboratory. The CB also confirmed that in the case of contradictory laboratory results, the result of the counter sample would always overrule the result of the first sample and that such cases would not be further investigated to verify whether the operator had complied with the organic rules. This is not in line with Article 91 of Regulation (EC) No 889/2008 which requires that the product cannot be placed on the market with indications referring to the organic production method until it is satisfied, on the basis of the information received from the operator or from other sources, that the doubt has been eliminated.

71. Several cases of notification of irregularities in the Organic Farming Information System which were reviewed by the audit team showed that actions taken by the CAs were adequate and the results of the investigation were uploaded within the required deadline.

Communication of irregularities:

72. Regional legislations require immediate notification of irregularities in cases (i) which involve operators controlled/certified by other CBs, and (ii) when products, plots, or operators are to be decertified by CAs. In Flanders, such notifications have to be done within three working days. In the other two regions, no deadline is imposed, which means that immediate notification is required according to the understanding of the two CAs concerned.

73. Both CBs confirmed that CAs are formally notified when irregularities involve operators in non-EU countries. This is not in line with Article 92(4) of Regulation (EC) No 889/2008 which requires that CBs, when identifying irregularities with regard to products under the control of other control bodies, shall inform those control bodies without delay. Nevertheless, CBs copy, on an ad-hoc basis, CAs into email communication by which operators are informed of irregularities. Moreover, CBs confirmed that the likelihood of irregularities are not required to be notified to CAs, which is not in line with Article 27(5)(d) of Regulation (EC) No 834/2007.

74. Files reviewed by the audit team confirmed that findings of residues of non-authorised pesticides below the limit established in the regional legislations are not notified by the CBs to the relevant CAs. Moreover, CB2 did not notify cases of samples which showed multiple residues of non-authorised pesticides, neither was a case notified to the CA where a feed sample showed pesticide residues beyond the above mentioned limit. The

CB stated the case was not notified because no feed was left to be decertified.

Conclusions on Measures in case of Irregularities and Infringements

75. The CBs visited apply a "soft" approach with regard to enforcement measures in particular in cases of severe and recurrent irregularities. This, together with the fact that not all irregularities are either reported to relevant CAs or fully investigated by CBs, reduces the effectiveness of the control system.

5.3 SEED DATA BASE

Legal Requirements

Articles 48, 49 and 56 of Commission Regulation (EC) No 889/2008

Findings

76. The management of the database is delegated to a private body organicXseeds in accordance with contracts signed between the manager of the database, the Research institute for organic agriculture (FiBL), and the regional CAs. The seed data base can be found at: https://www.organicxseeds.be/

77. Information in the seed database is updated by seed suppliers.

78. The database provides information about availability or non-availability. There are three timeslots defined during which operators may ask for derogations (winter, spring, summer).

79. The operator has to prove that he/she has contacted the supplier to confirm the lack of sufficient available quantities.

80. Seeds available in Belgium are checked by CBs in case of application by operators.

81. Files reviewed by the audit team were considered satisfactory.

Conclusions on Seed Data Base

82. A seed database has been established in accordance with Article 48 of Commission Regulation (EC) No 889/2008.

6 OVERALL CONCLUSIONS

The control system for organic production in Belgium is only partially in place. There is no CA responsible for import controls of organic goods, market controls only cover follow up of complaints and CBs are not annually supervised by all regional CAs. Although inspections by CBs at operators are overall effective and the number of additional and unannounced inspections and sampling by CBs goes far beyond EU requirements, enforcement is weak, in

particular, in cases of severe and recurrent irregularities. This, together with the fact that the likelihood of irregularities are neither reported to CAs nor fully investigated by them reduces the effectiveness of the control system.

7 CLOSING MEETING

A closing meeting was held on 29 September with representatives from the CAs and representatives from the Accreditation body and Paying Agencies. At this meeting, the DG Health and Food Safety team presented the main findings and preliminary conclusions of the audit. The representatives of the CAs offered some initial comments and provisionally accepted the findings.

8 RECOMMENDATIONS

The CAs are invited to provide details of the action taken and planned, including deadlines for their completion (action plan), aimed at addressing the recommendation set out below, within 25 working days of receipt of this audit report. The CAs should:

No.	Recommendation
1.	Ensure that provisions in regional legislation as well as their implementation are in line with relevant provisions of the EU organic regulations, in particular with regard to • The mutilation of animals (Article 18 of Regulation (EC) No 889/2008) • The shortening of conversion period (Article 36(2)(b) of Regulation (EC) No 889/2008) • The grazing of animals (Article 14(2)(b)(ii) of Regulation (EC) No 834/2007 and Article 14(2) of Regulation (EC) No 889/2008) • The tethering of animals in small holdings (Article 39 of Regulation (EC) No 889/2008) • The controls of retailers (Article 27(3) of Regulation (EC) No 834/2007) *Recommendation based on conclusions 6, 28, 35, 41, 57* *Associated findings 5, 27, 30, 40, 53-56*
2.	Ensure that, in line with Article 27(1) of Regulation (EC) No 834/2007, the control system set up in Belgium duly provides for the designation of CAs responsible for controls in respect to all obligations established in the EU organic regulations, and in particular with regard to import controls, including those relating to electronic certification, as laid down in Regulation (EC) No 1235/2008. *Recommendation based on conclusion 16, 63* *Associated findings 12, 13, 15, 58-60, 62*
3.	Ensure that annual supervision of CBs by regional CAs is implemented in line with Article 92e of Regulation (EC) No 889/2008. *Recommendation based on conclusion 24* *Associated findings 20*
4.	Ensure that, in line with Article 92 of Regulation (EC) No 889/2008, documentary evidence issued by the CBs to operators does follow the model provided for in annex XII of the same regulation. *Recommendation based on conclusion 28*

	Associated findings 26
5.	Ensure that there is a system in place for the verification of the exemption of retailers in line with Article 28(2) of Regulation (EC) No 834/2007. *Recommendation based on conclusion 28* *Associated findings 27*
6.	Ensure that reporting in the framework of the MANCP complies with Article 92f of Regulation (EC) No 889/2008, and in particular, that information referred to in Annex XIIIb of the same regulation is reported. *Recommendation based on conclusion 35* *Associated findings 29*
7.	Ensure that CBs perform effective controls and in particular that EU requirements are properly verified with regard to • The nature and quantities of organic products delivered to the unit and/ or held in storage at the premises when calculating the input/output balance (Article 66 of Regulation (EC) No 889/2007) • The results of the verification of the organic status of products by operators (Article 66(2) of Regulation (EC) No 889/2007). • Labelling of organic products and the reference to EU / non-EU agriculture (Article 24(1)(c) of Regulation (EC) No 834/2007) as well as the size of the EU logo (point 7 of Annex XI of Regulation (EC) No 889/2008) *Recommendation based on conclusions 41, 44* *Associated findings 38, 39, 43*
8.	Ensure that laboratories used by CBs for the testing of organic samples are designated by CAs as required by Article 12(2) of Regulation (EC) No 882/2004. *Recommendation based on conclusion 51* *Associated finding 47, 48, 49*
9.	Ensure that enforcement measures imposed by CBs in particular in case of sever and recurrent non-compliances are sufficiently effective to ensure compliance with Article 30 of Regulation (EC) No 834/2007. *Recommendation based on conclusion 75* *Associated finding 65, 66*

10.	Ensure that CBs take appropriate measures in case of suspicion of irregularities and do not put products on the market until they satisfy themselves that the doubt has been eliminated in line with Article 91 of Regulation (EC) No 889/2008. *Recommendation based on conclusion 75* *Associated finding 67, 68, 69, 70*
11.	Ensure that irregularities and the likelihood of irregularities are communicated by CBs to CAs, in line with Article 27(5)(e) and Article 30 of Regulation (EC) No 834/2007 as well as Article 92(4) of Regulation (EC) No 889/2008, respectively. *Recommendation based on conclusion 24, 75* *Associated finding 23, 69, 72-74*

The competent authority's response to the recommendations can be found at:

http://ec.europa.eu/food/audits-analysis/rep_details_en.cfm?rep_inspection_ref=2017-6073

ANNEX 1 – LEGAL REFERENCES

Legal Reference	Official Journal	Title
Reg. 882/2004	OJ L 165, 30.4.2004, p. 1, Corrected and re-published in OJ L 191, 28.5.2004, p. 1	Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules
Reg. 834/2007	OJ L 189, 20.7.2007, p. 1-23	Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91
Reg. 889/2008	OJ L 250, 18.9.2008, p. 1-84	Commission Regulation (EC) No 889/2008 of 5 September 2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products with regard to organic production, labelling and control
Reg. 1235/2008	OJ L 334, 12.12.2008, p. 25-52	Commission Regulation (EC) No 1235/2008 of 8 December 2008 laying down detailed rules for implementation of Council Regulation (EC) No 834/2007 as regards the arrangements for imports of organic products from third countries